

No. 11-55016

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

TARLA MAKAEFF, Individually and on Behalf of All Others Similarly Situated,

Plaintiff-Counter-Defendant-Appellant,

vs.

TRUMP UNIVERSITY, LLC,

Defendant-Counter-Claimant-Appellee.

Appeal from the United States District Court
for the Southern District of California
No. 3:10-cv-00940-IEG(WVG)
The Honorable Irma E. Gonzalez

UNOPPOSED MOTION FOR EXTENSION OF TIME IN WHICH TO FILE
PLAINTIFF-APPELLANT'S REPLY BRIEF

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Appellee Trump University filed and served its Answering Brief in this matter electronically on August 15, 2011. Appellant Tarla Makaeff's Reply Brief is therefore presently due on August 29, 2011. *See* F.R.A.P. 26(c) & 31(a). Pursuant to Federal Rule of Appellate Procedure 26(b) and Circuit Rule 31-2.2(b), and for the reasons set forth below, appellant Tarla Makaeff now respectfully moves this Court for an order extending the time in which to file her Reply Brief to September 27, 2011, which constitutes an extension of 29 days. This Court granted Makaeff a 43-day extension of time to file her Opening Brief (Docket entries 9, 10), and granted Trump University's motion for a 49-day extension for its Appellee's Answering Brief (Docket entries 24, 25). No extension of time to file the Reply Brief has previously been sought or granted.

The motion is based on the accompanying Declaration of Eric Alan Isaacson in Support of Plaintiff-Appellant's Unopposed Motion for Extension of Time in which to File Reply Brief. As detailed in that declaration, other personal and professional commitments make it impossible for the attorney primarily responsible for briefing this appeal on Makaeff's behalf to complete an adequate Reply Brief by August 29, 2011.

Among those responsibilities, counsel must to be out of town from August 23, through August 27, 2011, on family matters that cannot reasonably be rescheduled. Counsel is working on a reply brief in *Reid v. First Horizon*, No. 11-5473, which is

due to be filed in the Sixth Circuit on September 2, 2011, just three days after the Reply Brief in this case is due. Counsel is also working with colleagues on a patent appeal, *Jardin v. DATAlegro, Inc.*, No. 2011-1474, where the Opening Brief is due in the Federal Circuit on September 6, 2011 (with an extension sought to September 20, 2011). Cases in which counsel has appeared on behalf of *pro bono* clients, as *amici curiae*, currently are scheduled for argument before the Ninth Circuit at Pasadena on September 1, 2011, and before the California Supreme Court at San Francisco on September 6, 2011. Counsel's *pro bono* clients wish their lawyer to attend those hearings, to prepare summaries for them, and also to make himself available to respond to press inquiries in each of those matters.

In accordance with Circuit Rule 31-2.2(b)(5), appellant represents that through her counsel she has exercised diligence and will file the Reply Brief within the time requested. Counsel for the Defendant-Appellee Trump University, Jill A. Martin, was notified of this motion by telephone calls placed to her office, and has indicated that Trump University will not oppose this motion.

For the reasons set forth in the attached declaration, appellant respectfully requests that this Court enter an order extending the due date for filing the Reply Brief to September 27, 2011.

DATED: August 18, 2011

Respectfully submitted,

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s/ Eric Alan Isaacson

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**DECLARATION OF ERIC ALAN ISAACSON IN SUPPORT OF
PLAINTIFF-APPELLANT'S UNOPPOSED MOTION FOR EXTENSION
OF TIME**

I, Eric Alan Isaacson, declare that:

1. I am an attorney duly admitted to practice in the State of California and before the United States Court of Appeals for the Ninth Circuit. I am the counsel of record for the appellant in this action, and am the attorney primarily responsible for briefing this appeal on behalf of the appellant Tarla Makaeff.

2. Appellant now respectfully moves this Court for an extension of time in which to file the Reply Brief to September 27, 2011, which would constitute an extension of 29 days.

3. Appellant Makaeff previously sought and was granted a 43-day extension of time to file her Opening Brief. (Docket entries 9, 10).

4. Appellee Trump University sought and was granted a 49-day extension of time to file its Appellee's Answering Brief. (Docket entries 24, 25).

5. As Trump University filed and served its Appellee's Answering Brief electronically on August 15, 2011, Appellant's Reply Brief is currently due on August 29, 2011. *See* F.R.A.P. 26(c) & 31(a).

6. No extension of time to file the Reply Brief has previously been sought or granted.

7. Appellant seeks a 29-day extension of time because of several unavoidable scheduling conflicts make it impossible for me to file an adequate Reply Brief in this matter by August 29, 2011.

8. I must be out of town from August 23, 2011 through August 27, 2011, dealing with family matters that require my attention and that cannot reasonably be postponed or rescheduled.

9. I also am responsible for preparing and filing a reply brief in *Reid v. First Horizon*, No. 11-5473, due to be filed in the Sixth Circuit on September 2, 2011, only three days after the Reply Brief in this case is due. *Reid* is a shareholder derivative suit, and on appeal more than 20 pages of the Appellees' brief is devoted to purported alternative grounds for affirmance that were not reached below, that accordingly were not discussed in my client's Opening Brief, and that I must now research and brief as appellate counsel who was not involved in the proceedings below. This will require more time than might ordinarily be expected for a reply brief.

10. I am also working with colleagues briefing *Jardin v. DATAlegro, Inc.*, Federal Cir. No. 2011-1474, in which the Joint Appendix must be filed August 19, 2011, with the Opening Brief currently due on September 6, 2011, though an extension of time is being sought to September 20, 2011, for the filing of the Opening Brief.

11. I represent the Forum on the Military Chaplaincy, California Faith for Equality, the California Council of Churches, the General Synod of the United Church of Christ, the Unitarian Universalist Association, and others, in *Log Cabin Republicans v. United States*, Nos. 10-56634, 10-56813, which is scheduled for argument before the Ninth Circuit on September 1, 2011, at Pasadena, California. Several of my *pro bono* clients wish me to attend the hearing, that I may prepare summaries for them, and make myself available to respond to media inquiries.

12. I also represent California Faith for Equality, the California Council of Churches, General Synod of the United Church of Christ, the Episcopal Bishops of California and Los Angeles, the Unitarian Universalist Association, and others in *Perry v. Brown* (formerly known as *Perry v. Schwarzenegger*), 9th Cir. No. 10-16696 & Cal. Supreme Ct. No. S189476. This Court certified questions to the California Supreme Court, which has scheduled argument on the certified questions for September 6, 2011, at San Francisco, California. My *pro bono* clients, whom I have represented in a series of cases, and on whose behalf I have filed briefs in the *Perry* matter in the district court, in the Ninth Circuit, and in the California Supreme Court, desire me to monitor the argument, and to make myself available to respond to press inquiries.

13. As a consequence of the foregoing responsibilities, I cannot prepare and file an adequate Reply Brief in this case by August 29, 2011, but will require an extension.

14. Under the circumstances, I believe an extension of 29 days is reasonable, and will permit me to prepare and file an adequate brief.

15. I have exercised diligence in prosecuting this appeal, and will file the Reply Brief within the time requested.

16. I telephoned Jill A. Martin, counsel for Defendant-Appellee Trump University, leaving a message with her secretary on August 17, 2011, and a voicemail notifying her of this motion on August 18, 2011, which was answered with a call from Ms. Martin's secretary informing me on Ms. Martin's behalf that Trump University will not oppose this motion.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 18th day of August, 2011, at San Diego, California.

s/ Eric Alan Isaacson

ERIC ALAN ISAACSON
Counsel for Plaintiff-Counter-Defendant-Appellant

DECLARATION OF SERVICE

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and employed in the City and County of San Diego, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 655 West Broadway, Suite 1900, San Diego, California 92101.

2. I hereby certify that on August 18, 2011, I electronically filed the foregoing document: **UNOPPOSED MOTION FOR EXTENSION OF TIME IN WHICH TO FILE PLAINTIFF-APPELLANT'S REPLY BRIEF** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

3. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on August 18, 2011, at San Diego, California.

s/ Eric Alan Isaacson

ERIC ALAN ISAACSON
Counsel for Plaintiff-Counter-Defendant-Appellant

Service List

United States District Court for the Southern District of California, No. 10-cv-00940-IEG-WVG;
U.S. Court of Appeals for the Ninth Circuit, No. 11-55016

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